

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 11 Scallop Regulations and Chapter 11.08 Targeted Closures
Emergency Regulations

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking for the implementation of conservation closures located in Portland Harbor, Hussey Sound/Chandler Cove (hand harvest by scuba diving allowed), Narraguagus/Pigeon Hill Bay Rotational Area and Chandler Bay in order to protect Maine's scallop resource as authorized by 12 MRS §6171(3) due to the risk of imminent depletion and unusual damage. Based on direct input from Marine Patrol and independent industry participants as well as observations made through the Department's monitoring programs, the level of fishing effort in these areas during the fishing season has likely exceeded the 30% removal target that ensures the fishery continues to rebuild. The Department is concerned that unrestricted harvest during the remainder of the 2016-2017 fishing season in these specific areas may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing broodstock essential to a recovery. In addition, there are a number of clarifications in this rulemaking.

EFFECTIVE DATE: January 1, 2017

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DEPARTMENT OF MARINE RESOURCES

Chapter 11 Scallops

11.05 Scallop Harvesting Gear Restrictions

1. State Waters Drag Size Restriction

It shall be unlawful to possess on any vessel fishing for scallops, or to fish for or take scallops, in Maine's territorial waters:

Any scallop drag or combination of scallop drags that exceed 10 feet 6 inches in width (by measuring from the extreme outside of the mouth of the drag or drags).

2. Gouldsboro Bay Drag Size Restriction

It shall be unlawful to possess on any vessel while fishing for scallops or to fish for or take scallops with any combination of scallop drags having an aggregate in excess of 4 feet 6 inches in Gouldsboro Bay north of a line drawn from the most eastern point of Youngs Point southerly to the most southern end of Outer Bar Island; thence northeasterly to the southern end of Sally Island; thence northeasterly to the southern end of Eastern Island; thence from the northern most end of Eastern Island to the southern most point of Dyers Point.

3. Blue Hill Bay Drag Size Restriction

It is unlawful to possess on any vessel fishing for scallops or fish for or take scallops with any one combination of scallop drags in excess of 8 feet 6 inches in width by measuring from the extreme outside edge of the mouth of the drag or drags, in Blue Hill Bay above or north of a line drawn from the southernmost tip of Bass Harbor Head in the Town of Tremont westerly to the most southern tip of Pond Island and thence to most southern tip of Naskeag Point in the Town of Brooklin.

4. Swans Island Lobster Conservation Area Scallop Drag Size Restrictions

It shall be unlawful to possess on any vessel fishing for scallops or fish for or take scallops within the Swans Island Lobster Conservation Area (DMR Regulation, Ch. 25.90, (A) (1)) with any scallop drag or combination of scallop drags (chain sweep or rock drags) having an aggregate width in excess of eight feet, six inches.

5. Kittery Area Drag Size Restrictions

It shall be unlawful to possess on any fishing vessel fishing for scallops, or fish for or take scallops with, any one combination of scallop drag or drags in excess of 5 feet 6 inches in width, measured from the extreme outside edge of the mouth of the drag or drags, west of a line drawn from the Horn at the tip of Cape Neddick, to Boon Island Light, to the Boon Island Ledge Whistle, then on a magnetic bearing of 104 degrees to the intersection with the Three Mile Limit (70° 24.3' W. Longitude, 43° 07.4' N. Latitude), as shown on NOAA, National Ocean Survey chart #13286.

6. Dragging for Scallops Damariscotta River, Lincoln County

It shall be unlawful to fish for or take scallops in the Damariscotta River with any scallop drag (chain sweep or rock drag) north of a line drawn from Emerson Point, at the southern most tip of Ocean Point in the town of Boothbay, easterly to Thrumcap Island, then northerly to the southern tip of Rutherford Island, South Bristol from April 16 to ½ hour after sunset December 31 of each year.

7. Scalping in the Frenchboro Cable Area - Hand Scallop Fishing Allowed

- A. It shall be lawful to take scallops by hand, unless prohibited by other statute or regulation in the Frenchboro Cable Area described in 12 M.R.S. § 6954-A(1) (hereafter "Frenchboro Cable Area").
- B. It shall be unlawful to operate any watercraft when towing a drag or trawl while taking scallops by hand in the Frenchboro Cable Area.

- C. It shall be unlawful to use a watercraft rigged for dragging while taking or attempting to take scallops by hand in the Frenchboro Cable Area.
- D. It shall be unlawful to possess scallops aboard a watercraft rigged for dragging while taking or attempting to take scallops by hand in the Frenchboro Cable Area.

11.08 Targeted Scallop Conservation Closures

Targeted closures are imposed as conservation measures to assist in rebuilding specific areas of the state. Targeted closures may be implemented based on depletion, seed, the presence of spat-producing scallops, and other conservation factors as determined by the Commissioner. Targeted closures are not seasonal closures and are implemented in order to improve and enhance the conservation and rebuilding of the resource in these specific areas.

It shall be unlawful to fish for, take, or possess scallops taken by any method within any of the following closed areas, except for Muscle Ridge (1) which shall be open to diving on Wednesdays and Fridays and shall be open to dragging on Mondays and ~~Wednesdays~~ Tuesdays, in dates specified in section 11.09. All directions are relative to True North (not magnetic).

Transiting exception:

Any vessel possessing scallops onboard, may transit these targeted closures only if the vessel has all fishing gear (dredges, drags, regulators, buoyancy compensators, fins, tanks, weight belts) securely stowed. Securely stowed shall mean the main wire shall not be shackled or connected to the dredges or drags, and the towing swivel will be at block or on the winch for draggers, while regulators, buoyancy compensators and tanks should be disconnected with fins and weight belts removed for divers.

- (1) Muscle Ridge (Open Mondays and Tuesdays to draggers. Open Wednesdays and Fridays to divers.)

Eastern boundary: West and South of a line drawn from the most eastern tip of Ash Point, South Thomaston at Latitude 44° 02.805 N Longitude 069° 04.393 W to RW "PA" Mo (A) GONG; then continuing southwest to the northern tip of Two Bush Island.

Western boundary: North of a line starting at the northern end of the Rackliff Island causeway then following the shore to the most southern point of Rackliff Island continuing to the most southern point of Norton Island and then continuing to the most southern point of Whitehead Island then to the southern end of Two Bush Island.

- (2) Lower Muscle Ridge

Northern boundary: East and South of a line beginning at the most eastern tip of Whitehead Island, St. George, to the southern tip of Seal Island (Hay Ledges) continuing to the most southwestern point of Graffam Island, then continuing to the southwestern point of Pleasant Island and continuing in a southeasterly direction to the northeastern tip of Two Bush Island.

Southern boundary: North of a line starting at the most southern point of Whitehead Island, St. George, to the southern end of Two Bush Island.

- (3) Ocean Point

West of a line drawn from Emerson Point, at the southernmost tip of Ocean Point, Boothbay at Latitude 43° 48.852 N Longitude 069° 35.454 W, to the most northern tip of Fisherman Island, then continuing to R N "8" AND East of a line drawn from R N "8" to the most southwestern tip of Ocean Point at Latitude 43° 48.874 N Longitude 069° 36.332 W.

- (4) Eastern Casco Bay

Eastern boundary: West and North of a line drawn from the most southern tip of Gun Point, Harpswell, to G "3", South of Round Rock; continuing in a southwesterly direction to R N "4" at Drunkers Ledges.

Western boundary: East and North of a line draw from R N "4" at Drunkers Ledges to the most southern tip of Jaquish Island; then east of a line from the most northwestern tip of Jaquish Island at Latitude 43° 42.950N Longitude 70° 00.137W to the most southeastern tip of land along Jaquish Gut at Latitude 43° 43.043N Longitude 70° 00.128W.

(5) Sheepscot River

Eastern boundary: West and North of the Townsend Gut Bridge connecting Southport Island and West Boothbay Harbor.

Western boundary: East of a line drawn from the most southern tip of Hockomock Point, Woolwich to the most northern tip of Mill Point, Arrowsic Island, and following the shoreline to the Arrowsic Island-Georgetown Island bridge, and then continuing along the northern coastline to the northeast tip of Dry Point, Georgetown Island.

Southern boundary: North of a line drawn from the southernmost tip of Cape Newagen, Southport Island, to the eastern tip of Outer Head Island, Georgetown Island, then following the southern shoreline to the most southwestern tip of Outer Head Island, then a line drawn due west to the nearest point of land on Griffith Head, Georgetown Island.

(6) Muscongus Bay

North and east of a line beginning at the intersection of Latitude 43° 55' N on Pemaquid Neck (just north of Brown's Cove, Bristol), and following this latitude to its intersection on the eastern side of Hupper Island, Port Clyde, then to the southern tip of Marshall Point.

(7) New Meadows River

Southeast boundary: North of a line drawn from the southernmost tip of Birch Point, Phippsburg, to the southernmost tip of Long Island, Harpswell, then continuing along the western coastline to the northern tip of Long Island, Harpswell, then a line drawn due west to the nearest point of land on Sebascodogan Island, Harpswell.

Southwestern boundary: North of the Route 24 Gurnet Bridge (Harpswell).

(8) Card Cove

West of a line drawn from the southeastern most tip of Pinkham Point, Harpswell, in a southwesterly direction to the nearest point of land and to include all of Card Cove, Harpswell.

(9) Beals-Jonesport Bridge

Eastern boundary: West of a line drawn from the most eastern tip of Perio Point, Beals to OW Look's wharf, Jonesport.

Western boundary: East of the Jonesport-Beals Bridge.

(10) Portland Harbor

Northern boundary: South of a line drawn from the northern tip of South Portland at the entrance to Portland Harbor at Bug Light 'Fl 4s 3M Priv' to the fixed Navigational Aid 'Fl 2.5s 24 ft 5M' on the western end of Diamond Ledges near Ft Gorges, Portland.

Eastern boundary: West of a line drawn from the fixed Navigational Aid 'Fl 2.5s 24 ft 5M' on the western end of Diamond Ledges to the southwestern tip of House Island, Portland to the westernmost tip of Cushing Island, Portland, then following the

shoreline in a southerly direction to the southwestern most tip of Cushing Island, Portland.

Southern boundary: North of a line drawn from the southwestern most tip of Cushing Island, Portland to the northeastern most tip of land on the north shore of Ship Cove, Cape Elizabeth.

(11) Hussey Sound/Hussey Cove

North and west of a line drawn from the most northeastern tip of Long Island to the most southern tip of Deer Point, Great Chebeague Island; then following the shoreline in a northerly direction to the most southwestern tip of Ricker Head, Great Chebeague Island. Then south and east of a line from the most southwestern tip of Ricker Head, Great Chebeague Island, to the most northeastern tip of Little Chebeague Island, then following the southern shoreline to the most western tip of Little Chebeague Island, then continuing in a southwest direction to the most northern tip of Cow Island. Then following the northern shoreline to the southwestern tip of Cow Island; then continuing in a southwest direction to the most northern tip of Great Diamond Island, Portland. Then following the eastern shoreline of Great Diamond Island to the most northern tip of the southern shore of Diamond Cove; continuing in a southeast direction to the most southwestern tip of Pumpkin Island. Then following the eastern shoreline to the most eastern tip of Pumpkin Island; continuing to the most western tip of College Island. Then following the north shore of College Island to the most eastern tip and continuing in a northeast direction to the nearest point of land on Long Island.

(12) Narraguagus/Pigeon Hill Bay

Eastern boundary: South and West of a line starting at Strout Point in the town of Milbridge to the most northern tip of Foster Island in the town of Milbridge then The most southeastern tip of Fosters Island to the most northern tip of Dyers Island; continuing from southern tip of Dyers Island to the most northwestern tip of Flint Island and the most southwestern tip of Flint Island then running Magnetic South to the three mile limit.

(13) Chandler Bay

North of a line starting at the most southeastern tip of Sandy River Beach to the most southern tip of Bar Island, continuing to the most southern tip of Ballast Island; then continuing along the shore to the most northeastern point of Great Head, Roque Island; then northeast to the most southern end of Shoppee Point, Roque Bluffs and to include all the upper portions of Chandler Bay and Englishman Bay as well as Great Cove.

11.09 Limited Access Areas

The areas below are open on the dates specified, unless otherwise indicated in 11.08.

It shall be unlawful to fish for, take, or possess scallops taken by any method within any of the following Limited Access Areas except by divers on December 1, 3, 8, 10, 15, 17, 22 and 29, 2016; January 7, 2017; March 2, 9, 16, 18, 23, 25 and 30, 2017; and April 6 and 13, 2017 except for MDI Area (5) and the East Moosabec Reach Area (6) where fishing shall be only open to divers on December 1, 8, 15, 22 and 29, 2016; January 5, 12, 19 and 26, 2017; February 2, 9, 16, and 23, 2017; March 2, 9, 16, 23 and 30, 2017; and April 6 and 13, 2017 and Whiting and Dennys Bays Area (4) which shall be open to divers on December 3, 10, 17, 24 and 31, 2016; January 6, 13, 20 and 27, 2017; February 3, 11, 18 and 25, 2017; and March 4, 10, 17 and 24, 2017. All directions are relative to True north (not magnetic).

It shall be unlawful to fish for, take, or possess scallops taken by any method within any of the following Limited Access Areas except by draggers on January 2, 9, 16, 23 and 30, 2017; February 6, 13, 20 and 27, 2017; March 6, 13, 20 and 27, 2017; and April 3 and 10, 2017 except for MDI Area

(5) and the East Moosabec Reach Area (6) where fishing shall be only open to draggers on January 2, 9, 16, 23 and 30, 2017; February 6, 13, 20 and 27, 2017; and March 6, 13, 20 and 27, 2017 and Whiting & Dennys Bays (4) where fishing shall be open to draggers on December 7, 14, 21 and 28, 2016; January 4, 11, 18 and 25, 2017; February 1, 8, 15 and 22, 2017; and March 1, 8, 15, 22 and 29, 2017. All directions are relative to True north (not magnetic).

Transiting exception:

Any vessel possessing scallops onboard, may transit these Limited Access Areas, only if the vessel has all fishing gear (dredges, drags, regulators, buoyancy compensators, fins, tanks, weight belts) securely stowed. Securely stowed shall mean the main wire shall not be shackled or connected to the dredges or drags, and the towing swivel will be at block or on the winch for draggers, while regulators, buoyancy compensators and tanks should be disconnected with fins and weight belts removed for divers.

The Commissioner may close harvesting for the remainder of the season in the Limited Access Areas listed below though emergency rulemaking if the Department has information that indicates there is a likelihood that between 30 percent and 40 percent of the harvestable biomass has been removed.

(1) Casco Bay Area:

Western boundary: South of a line drawn from the most southwestern point of Basin Point (Harpswell) to the northern tip of Jewell Island. Also, the waters between and to the north of Basin Point and Gun Point bounded by the Route 24 Gurnet Bridge (Harpswell).

Eastern boundary: West and North of a line drawn from the most southern tip of Gun Point, Harpswell, to G "3", South of Round Rock; continuing in a southwesterly direction to R N "4" at Drunkers Ledges, then continuing to the southeastern tip of Jewell island.

(2) Damariscotta/Sheepscot Area: [Sheepscot River closed in 2016-17 season, as per 11.08(5)]

South of a line drawn from the most northeastern point of Dogfish Head to the most northeastern point of Macmahan Island, and south of a line drawn from the most northwestern point of Macmahan Island to the most northeastern tip of Soldier Point and south and east of the Southport Island Bridge. Then north of a line drawn from the most southern point of Outer Head Island at Griffith Head, Georgetown to the most southern tip of Cape Island, Southport and then to the most southern tip of Fishermen Island. Then, north of a line from the most northern tip of Fishermen Island to the most southwestern point of Thrumcap Island, and west of a line drawn from this point to the most southern tip of Shipley Point, following the western shoreline of Rutherford Island. Also, west of the South Bristol Bridge, and to include the Damariscotta River.

(3) Muscongus/Western Penobscot Area: [Muscongus Bay closed in 2016-17, as per 11.08(6)]

Western boundary: North and east of a line beginning at the intersection of Latitude 43° 55' N on Pemaquid Neck (just north of Brown's Cove, Bristol), and following this latitude to its intersection on the west shore of Mosquito Island, St. George.

Eastern boundary: South and west of a line starting at the northern end of the Rackliff Island causeway then following the shore to the most southern point of Rackliff Island continuing to the most southern point of Norton Island and then continuing to the most southern point of Whitehead Island then to the southern end of Two Bush Island and continuing in a southwest direction to the most eastern tip of Mosquito Island, St. George.

(4) Whiting Bay and Denny's Bay Area:

It shall be unlawful to fish for or take scallops and or urchins west of a line starting at the western end of Mahar Point, Pembroke, due south to the nearest point of land on Crow Neck, Trescott, to include all of Whiting Bay and Denny's Bay.

(5) Mount Desert Island Area

Southern boundary: North and west of a line drawn from the southernmost tip of Sargent Head, ~~Southwest~~ Northeast Harbor, southwesterly to the most northern top of King Point, Southwest Harbor and to include all of Somes Sound.

(6) East Moosabec Reach Area

Eastern boundary: West of a line starting at the western end of the breakwater in Sawyer's Cover, Jonesport, to the most western end of Pig Island and then due south to the closest point of land on Great Wass Island.

Western boundary: West of a line drawn from the most eastern tip of Perio Point, Beals to OW Look's wharf, Jonesport.

11.12 Ten (10) Year Rotational Management Plan

1. Zone Two (2): Eastern Maine

The open and closed seasons in the specified areas within Zone Two (2) shall be open on a rotational basis as shown in the following table:

Zone Two (2) Eastern Maine 10 Year Rotational Management Plan Schedule										
Rotation	Year 1 2012-13 Season	Year 2 2013-14 Season	Year 3 2014-15 Season	Year 4 2015-16 Season	Year 5 2016-17 Season	Year 6 2017-18 Season	Year 7 2018-19 Season	Year 8 2019-20 Season	Year 9 2020-21 Season	Year 10 2021-22 Season
First	X	X	OPEN	X	X	OPEN	X	X	OPEN	X
Second	OPEN	OPEN	X	X	OPEN	X	X	OPEN	X	X
Third	OPEN	OPEN	X	OPEN	X	X	OPEN	X	X	OPEN

A. First Rotation

It shall be unlawful to fish for, take, or possess scallops taken by any method within any of the following closed areas, except for the 2014-15 fishing season, the 2017-18 fishing season and the 2020-21 fishing season. All directions are relative to True North (not Magnetic unless specified as such).

Transiting exception:

Any vessel possessing scallops onboard, may transit these closed areas, only if the vessel has all fishing gear (dredges, drags) securely stowed. Securely stowed shall mean the main wire shall not be shackled or connected to the dredges or drags, and the towing swivel will be at block or on the winch.

(1) The Bold Coast

Eastern boundary: South and West of a line drawn from the international bridge that connects Lubec to Campobello Island, New Brunswick, Canada.

Western boundary: North and East of a line starting at the most western tip of Jim's Head in the town of Trescott and Magnetic south to the three mile limit.

(2) Little Kennebec/Englishman Bay:

Eastern boundary: South and West of a line starting at Bucks Head, Machiasport proceeding East to the southern end of Northwest Head on Cross Island then True South to the three mile limit.

Western boundary: East and South of a line starting at the most northeastern point of Great Head, Roque Island then northeast to the most southern end of Shoppee Point,

Roque Bluffs and from the eastern tip of Great Spruce Island to the day board at East Black Rock 'RW Bn', and then True South to the three mile limit, including Roque Island harbor however not to include the Thoroughfare between Roque Island and Great Spruce Island.

(3) Addison

Eastern boundary: South and West of a line starting at the most eastern end of Tibbett Island going due North to the closest point of land on Moose Neck and southeast to the most northern tip of eastern Plummer Island then the most western tip of Toms Island then True South to the three mile limit.

Western boundary: East and South of a line starting at Strout Point in the town of Milbridge to the most northern tip of Foster Island in the town of Milbridge then the most southeastern tip of Fosters Island to the most northern tip of Dyers Island; continuing from southern tip of Dyers Island to the most northwestern tip of Flint Island and the most southwestern tip of Flint Island then running Magnetic South to the three mile limit.

(4) Frenchman's Bay

Eastern boundary: South and West of a line starting from the southern most tip of Schoodic Point Magnetic South to the three mile limit (western boundary of the Zone A lobster management zone).

Western boundary: East and North of a line starting at the most eastern end of Otter Point, Mount Desert Island continuing SE (135°) to the three mile limit at Latitude 44 16.080 N Longitude 68 07.919 W.

(5) Swan's Island

Eastern boundary: South and West of a line starting at Bass Harbor Head then in a southeast direction to the most easterly Point of Great Gott Island continuing on True South to the three mile limit.

Western boundary: East and South of a line from the southern most tip of Lopaus Point to the northern most point of Black Island; continuing from the western most tip of Black Island to the northern most tip of Swans Island Head, Swans Island; continuing South from West Point, Swans Island to Long Point, Marshall Island; then East of a line from the southwestern most tip of Lower Head, Marshall Island running True South to the three mile limit.

(6) Isle Au Haut Bay

Eastern boundary: South and West of a line starting at Moose Island, Deer Isle, to the western most point of Farrel Island, then True South to the three mile limit.

Western boundary: South of a line starting at the southern most point of Stinson Point, Deer Isle west to Mullen Head, North Haven; then East of a line starting at Fish Point, North Haven to Calder Wood Point on Calderwood Neck, Vinalhaven; continuing from the southern most point of Lane Island, Vinalhaven, True South to the three mile limit.

(7) Upper Penobscot Bay

Eastern boundary: Northwest of a line from Deer Isle bridge and the most southwestern point of Little Deer Isle to the most northern point of Pickering Island, then to the most eastern tip of Dark Harbor, Islesboro; continuing on from Grindel Point, Islesboro due West to the Sea Urchin Zone line at Latitude 44 16.913 N Longitude 68 58.508 W.

Western boundary: East of the Sea Urchin Zone Line.

B. Second Rotation

It shall be unlawful to fish for, take, or possess scallops taken by any method within any of the following closed areas, except for the 2012-13 fishing season, the 2013-14 fishing season, the

2016-17 fishing season and the 2019-20 fishing season. All directions are relative to True North (not Magnetic unless specified as such).

Transiting exception:

Any vessel possessing scallops onboard, may transit these closed areas, only if the vessel has all fishing gear (dredges, drags) securely stowed. Securely stowed shall mean the main wire shall not be shackled or connected to the dredges or drags, and the towing swivel will be at block or on the winch.

(1) The Cutler Shore

Eastern boundary: South and West of a line starting at the most western tip of Jim's Head in the town of Trescott and Magnetic South to the three mile limit.

Western boundary: North and East of a line drawn South from Great Head, Cutler to the three mile limit.

(2) Chandler Bay/Head Harbor Island

Eastern boundary: North and West a line starting at the most northeastern point of Great Head, Roque Island then northeast to the most southern end of Shoppee Point, Roque Bluffs and from the eastern tip of Great Spruce Island to the day board at East Black Rock 'RW Bn', and then True South to the three mile limit, including the Thoroughfare between Roque Island and Great Spruce Island.

Western boundary: East of the Jonesport Bridge then True South from the most Eastern tip of Little Pond Head to the three mile limit.

(3) Narraguagus/Pigeon Hill Bay

Eastern boundary: South and West of a line starting at Strout Point in the town of Milbridge to the most northern tip of Foster Island in the town of Milbridge then The most southeastern tip of Fosters Island to the most northern tip of Dyers Island; continuing from southern tip of Dyers Island to the most northwestern tip of Flint Island and the most southwestern tip of Flint Island then running Magnetic South to the three mile limit.

Western boundary: North and East of a line starting at the most southern tip of Petit Manan to EB gong, then South to the northern most tip of Green Island; then from the southeastern top of Green Island to the northern tip of Petit Manan Island; then from the southern tip of Petit Manan Island to N"2", then to G"1" bell , then True South to the three mile limit.

(4) Cranberry Isle Area

Eastern boundary: South and West of a line starting at the most eastern end of Otter Point, Mount Desert Island continuing SE (135°) to the three mile limit at Latitude 44 16.080 N Longitude 68 07.919 W.

Western boundary: North and East of a line starting at Bass Harbor Head Light then in a southeast direction to the most easterly point on the eastern head of Great Gott Island continuing on True South to the three mile limit.

(5) Lower Blue Hill Bay/Jericho Bay

Eastern boundary: North and West of a line from the southern most tip of Lopaus Point to the northern most point of Black Island; continuing from the western most tip of Black Island to the northern most tip of Swans Island Head.

Western boundary: North and East of the line from the most southeastern point of Naskeag Point, Brooklin to the northern most tip of Swan's Island Head, Swan's Island.

Northern boundary: South of a line drawn from the eastern most point of Harriman Point due East to the southern tip of Hardwood Island, then South to the northern tip of Moose Island, then from the southern tip of Moose Island East to Reed Point, Mount Desert Island.

(6) East Isle Au Haut Bay

Eastern boundary: West of a line from the eastern tip of Coles Head on Whitemore Neck, Deer Isle to the western most point of Millett Island, then South to Richs Point, Isle Au Haut; then from the southern tip of Eastern Head, Isle au Haut, True South to the three mile limit.

Western boundary: South and East of a line starting at Moose Island, Deer Isle, to the western most point of Farrel Island, then True South to the three mile limit

(7) Mid Penobscot Bay

Northern boundary: South of a line from the most northwestern point of Little Deer Isle to the most northern point of Pickering Island, then to the most eastern tip of Dark Harbor, Islesboro; continuing on from Grindel Point, Islesboro due West to the Sea Urchin Zone line at Latitude 44 16.913 N Longitude 68 58.508 W.

Southern boundary: North of a line starting at the southern most point of Stinson Point, Deer Isle, West to Mullen Head, North Haven AND North of a line starting at Pulpit Rock, North Haven due West to the Sea Urchin Zone line at Latitude 44 09.551 N Longitude 69 01.510 W.

C Third Rotation

It shall be unlawful to fish for, take, or possess scallops taken by any method within any of the following closed areas, except for the 2012-13 fishing season, the 2013-14 fishing season, the 2015-16 fishing season, the 2018-19 fishing season and the 2021-22 fishing season. All directions are relative to True North (not Magnetic unless specified as such).

Transiting exception:

Any vessel possessing scallops onboard, may transit these closed areas, only if the vessel has all fishing gear (dredges, drags) securely stowed. Securely stowed shall mean the main wire shall not be shackled or connected to the dredges or drags, and the towing swivel will be at block or on the winch.

(1) Machias Area

North and East of a line starting at Bucks Head, Machiasport proceeding east to the southern end of Northwest Head on Cross Island then due South to the three mile limit, and West of a line drawn due south from Great Head, Cutler to the three mile limit.

(2) Wohoa/Western Bay

Eastern boundary: West of the Jonesport Bridge then True South from the most Eastern tip of Little Pond Head to the three mile limit.

Western boundary: North and East of a line starting at the most eastern end of Tibbett Island going due North to the closest point of land on Moose Neck and southeast to the most northern tip of eastern Plummer Island then the most western tip of Toms Island; then True South to the three mile limit.

(3) Gouldsboro/Dyer Bay

Eastern boundary: South and West of a line starting at the most southern tip of Petit Manan to EB gong. then South to the northern most tip of Green Island; then from the southeastern top of Green Island to the northern tip of Petit Manan

Island; then from the southern tip of Petit Manan Island to N"2"; then to G"1" bell; then True South to the three mile limit.

Western boundary: North and East of a line starting from the southern most tip of Schoodic Point Magnetic South to the three mile limit (western boundary of the Zone A lobster management zone).

(4) Upper Blue Hill Bay/Union River

North of a line from Eastern most point of Harriman Point due East to the southern tip of Hardwood Island, then South to the northern tip of Moose Island, then from the southern tip of Moose Island East to Reed Point, Mount Desert Island.

(5) Lower Jericho Bay

Northern boundary: South and east of a line from the southeastern point of Stinson Neck, Deer Isle to the southeastern point of Naskeag Point, Brooklin; continuing southeast to The northern most tip of Swan's Island Head, Swan's Island.

Eastern boundary: North and West of a line from northern most tip of Swans Island Head; continuing South from West Point, Swans Island to Long Point, Marshall Island; then West of a line from the southern most tip of Lower Head, Marshall Island running True South to the three mile limit.

Western boundary: East and south of a line from the southwestern tip of Stinson Neck, Deer Isle west to the eastern tip of Coles Head on Whitemore Neck, Deer Isle; then south to the western most point of Millett Island, then South to Richs Point, Isle Au Haut; then from the southern tip of Eastern Head, Isle au Haut, True South to the three mile limit.

(6) Eggemoggin Reach/Southeast Harbor

Eastern boundary: North and West of a line from the most southeastern point of Stinson Neck, Deer Isle then running to Naskeag Point, Brooklin AND North of a line starting at the most southwestern tip of Stinson Neck, Deer Island running to Coles Point on Whitmore Neck, Deer Island; this includes all of Southeast Harbor.

Western boundary: South and West of the Deer Isle Bridge.

(7) Lower Penobscot Bay & Outer Islands

Northern/Western boundary: South of a line starting at Pulpit Rock, North Haven due West to the Sea Urchin Zone line at Latitude 44 09.551 N Longitude 69 01.510 W and continuing south along the Sea Urchin Zone line to the three mile limit, encompassing the territorial waters around all the outer islands of Penobscot Bay including ~~Little Green Island, Large Green Island~~, Matinicus Island, Ragged Island, Wooden Ball Island, Seal Island and Matinicus Rock.

Eastern boundary: West of a line starting at Calder Wood Point, Vinalhaven to Fish Point, North Haven; then West of a line from the southern most point of Lane Island, Vinalhaven, True South to the three mile limit.

Basis Statement

Chapter 11 Scallop Regulations and Chapter 11.08 Targeted Closures Emergency Regulation

Justification:

The Department is taking emergency rulemaking action to implement targeted closures in the following areas: Portland Harbor, Hussey Sound/Chandler Bay (hand harvest by scuba diving allowed), Narraguagus/Pigeon Hill Bay Rotational Area and Chandler Bay. Based on direct input from Marine Patrol and independent industry participants as well as observations made through the Department's monitoring programs, the level of fishing effort in these areas during the fishing season has exceeded the 30% removal target that ensures the fishery continues to rebuild. Continued fishing threatens remaining broodstock scallops that are needed for successful spawning to rebuild the resource in these areas as well as sublegal product that will recruit up to the fishery for harvest in future years and therefore the areas described above will be closed to fishing (except Hussey Sound/Chandler Cove, which shall remain open to divers). In addition, there are a number of clarifications in this rulemaking which include:

- **11.05:** Additional language to clarify the exact points of land that the Blue Hill Bay Drag Restriction pertains to;
- **11.08:** A correction is needed to clarify that (1) Muscle Ridge is open to dragging on Mondays and Tuesdays in the opening paragraph of section 11.08;
- **11.09:** A clarification that Limited Access Areas are open unless otherwise indicated in section 11.08, such as the Sheepscot River and Muscongus Bay being closed during the 2016-17 scallop season. Also, a clarification was needed to change Southwest Harbor to Northeast Harbor for the southern boundary of the (5) Mount Desert Island Limited Access Area, and
- **11.12:** A correction to the C Third Rotation (7) Lower Penobscot Bay & Outer Islands Rotational Area which removed the language referring to Little Green and Large Green Islands as they are actually in Zone 1, not Zone 2, and are therefore not subject to rotational management.

Portland Harbor

The South Portland Harbor area was closed during the 2015-16 season due to the presence of high concentrations of sublegal and seed scallops as the spring 2015 scallop survey in Casco Bay showed that a large proportion of the resource was below minimum legal size (101.6 mm; Figures 1 & 2). The area was closed to fishing in the 2015-16 season to allow these scallops to recruit up to the fishery (Figure 3). Growth projections indicated that the majority of these scallops would recruit up to the fishery in December 2016 (Figure 5); therefore, the area reopened to harvest for the 2016-17 season. Part of the December 2, 2016 pre-season survey of the greater Casco Bay area included three sites in the area roughly between Cushing Island, Fort Gorges, and the eastern coast of South Portland (Figure 4). The pre-season survey in this area found a mean harvestable density of 3.59 g/m². Most of the scallop resource surveyed was of a harvestable size (Figures 5 & 6). There is an indication of another year-class with a mode of 80 mm that will likely recruit to the fishery in approximately two years (Figure 6).

Since the opening of the current season on December 5, 2016, approximately nine drag vessels have been continuously targeting the South Portland Harbor Area. Harvesters, who easily reached their daily limit the first few days in an hour or two, were fishing until afternoon to reach their daily limit during the third week of December, reflecting a decrease in the harvestable biomass in this area. An in-season survey conducted on December 22, 2016 confirmed that harvestable biomass densities had dropped to 0.86 g/m², a 76% decline (Figure 7 & 8). In addition, by December 26, 2016, the fourth week of fishing, the majority of vessels which had continuously targeted the area had moved to fish in other areas of Casco Bay, further supporting that the majority of harvestable scallops have been removed. Therefore, the 30% removal target has been exceeded and a closure of the Portland Harbor area (Figure 9) is warranted as continued fishing would threaten a critical mass of harvestable scallops which are needed for successful reproduction and spawning in order to replenish themselves for future harvest, as well as causing incidental damage to the sublegal scallops.

Hussey Sound/Chandler Cove [hand harvest by scuba diving allowed]

The pre-season survey of Casco Bay on December 2, 2016 included two sites in the upper part of Hussey Sound and one site in Chandler Cove (Figure 10). The mean harvestable biomass density in the two Hussey Sound sites was 1.12 g/m², and it was 0.94 g/m² at the Chandler Cove site. The mean for the three combined was 1.06 g/m². Although there are some harvestable scallops at these locations, all three sites in the two areas consisted primarily of sublegal (<101.6 mm) scallops (Figures 11). Continued drag fishing in this area will cause incidental mortality to sublegal and seed scallops. Therefore an immediate

closure of both the Hussey Sound and Chandler Cove areas (Figure 12) is needed to allow these scallops additional time to grow so they can recruit up to the fishery and become available for harvest in future years. However, due to the fact that divers have negligible impact to sublegal scallops during their hand harvest, diving will be allowed to continue in the area. Therefore, the Hussey Sound/Chandler Cove area requires a conservation closure for the drag component of the fleet to protect any larger spat producing scallops and to ensure that the sublegal and seed scallops are able to recruit up to the fishery for future harvest. Hand harvest by scuba divers will be permitted in the area to allow this component of the fleet access during the remainder of the first part of the season (last day January 6, 2017) and possibly the second half of their season (March 1 – April 15, 2017) when the weather improves as divers are severely restricted by depth, currents and foul weather.

Narraguagus/Pigeon Hill Bay Rotational Management Area

The Narraguagus/Pigeon Hill Rotational Area was surveyed in May, 2016. The median bootstrapped biomass density for the surveyed area projected from the May results to December 5, 2016, the season opening, was 0.53 g/m^2 , one of the lowest mean densities of harvestable biomass observed during the spring 2016 survey. Of the nineteen sites surveyed, seven contained zero scallops (Figure 13). There is a sign of a small amount of recruitment for future years (Figures 13 & 14) but most of the scallops in the surveyed area were of a harvestable size with a mode around 120 mm (Figure 14).

Marine Patrol observations and direct industry reports from the area indicate that the area has been fully exploited and that the fleet has sequentially depleted the majority of available harvestable scallops in the area, thus exceeding the 30% harvest target for the area. While nine drag vessels reported obtaining their daily landings limits during the first few days of the season on December 5 & 6, 2016, catches by the end of the week dropped off, with four draggers moving to fish the Chandler Bay/Head Harbor Island Rotational Area when weather permitted. By December 26, 2016, the start of the fourth week of fishing, those vessels had not returned to fish the area. Of the five vessels that remained, only one has reported landing their daily limit after spending the whole day fishing in the Narraguagus/Pigeon Hill Rotational Area. This is reflective of the low overall density with which the area opened this season, and the need to both protect any remaining broodstock as well as the sublegal scallops. Therefore, it is likely that the 30% harvest target for the area has been exceeded and a conservation closure of the Narraguagus/Pigeon Hill Bay Rotational Area (Figure 15) is needed in order to protect any remaining legal sized broodstock scallops so that the resource can continue to rebuild in this area as well as sublegal product that will recruit up to the fishery for harvest in future years.

Chandler Bay

Within the Chandler Bay/Head Harbor Rotational Area, the upper part of Chandler Bay above Ballast Island exhibited a high density of mostly harvestable scallops in the spring 2016 (Figure 16, left) survey in May and pre-season (Figure 16, right) survey on December 3, 2016. The mean harvestable density from the four pre-season survey sites was 3.5 g/m^2 . After approximately ten days of fishing, the in-season survey on December 20, 2016 at the same four sites found a harvestable density of 0.65 g/m^2 , a change of 81%. The pre-season survey on December 3, 2016 found that most of the scallops in this area were of a harvestable size (Figure 17), with a modal size of 130 mm. Although the survey drag does not fully retain scallops at smaller sizes, there is nonetheless a qualitative indication of an upcoming year-class in the 60 – 70 mm size range.

The Chandler Bay/Head Harbor Rotational Area has been the target of heavy fishing pressure since the first day of the season for draggers, December 5, 2016. A total of 69 vessels were observed fishing the area that day, with an additional 15 vessels joining for the rest of the week resulting in a total of 84 boats fishing the area by the fourth day. The majority of vessels focused their harvest above Ballast Island in the Chandler Bay in the first few days, with many fishermen reporting that they reached their daily limit of 15 gallons in just four 10 minute tows. However, by the fourth day of fishing on December 9, 2016 vessels had depleted the majority of harvestable scallops in that area and began spreading down the bay to exploit untouched scallop beds around Mark Island, Black Rocks, and Eastern Bay as well as in the mouth of the Jonesboro River. This is indicative of depletion in the area above Ballast Island, as well as serial depletion of surrounding areas as the fleet spread out to fish the greater area. Therefore, it is likely that 30% of the resource has been harvested and the area above Ballast Island should close immediately (Figure 19) to ensure rebuilding continues by protecting remaining spat-producing scallops as well as to allow sublegal and seed scallops the opportunity to recruit up to the fishery in future years.

The Department is concerned that continued harvesting during the remainder of the 2016-2017 fishing season in the above listed areas will damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reduce any remaining broodstock that is essential to a recovery.

An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in the Portland Harbor, Hussey Sound/Chandler Bay (hand harvest by scuba diving allowed), Narraguagus/Pigeon Hill Bay Rotational Area and Chandler Bay. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 12 M.R.S. §6171(3).

In accordance with 5 M.R.S. §8052, sub-§5-A, a statement of the impact on small business has been prepared. Information is available upon request from the DMR Commissioner's Office, State House Station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.

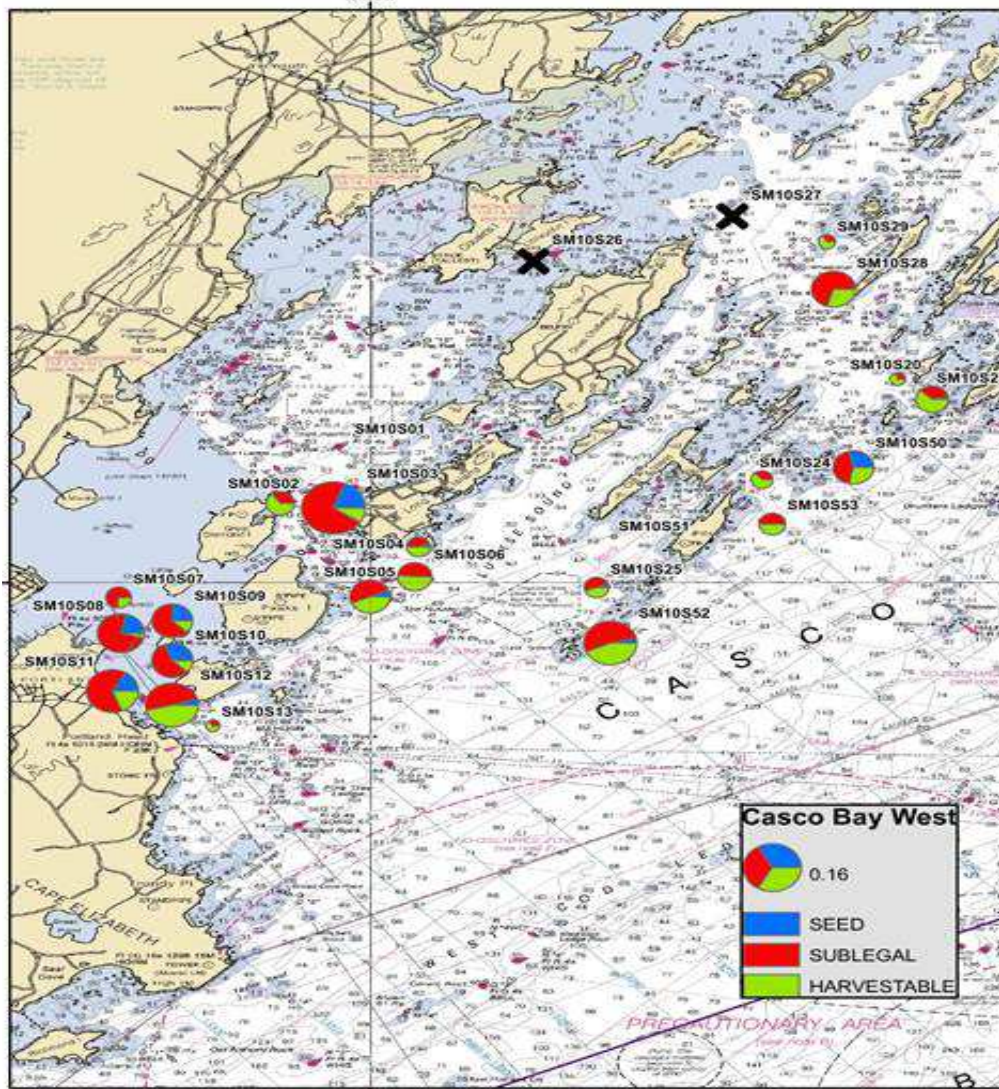


Figure 1. Density of scallops and size class composition by tow and location in the 2015 spring survey (Casco Bay West). The circle represent density of scallop (seed = less than 2.5 inches shell height, sublegal = 2.5-3.9 inches, harvestable = 4 inches or greater).

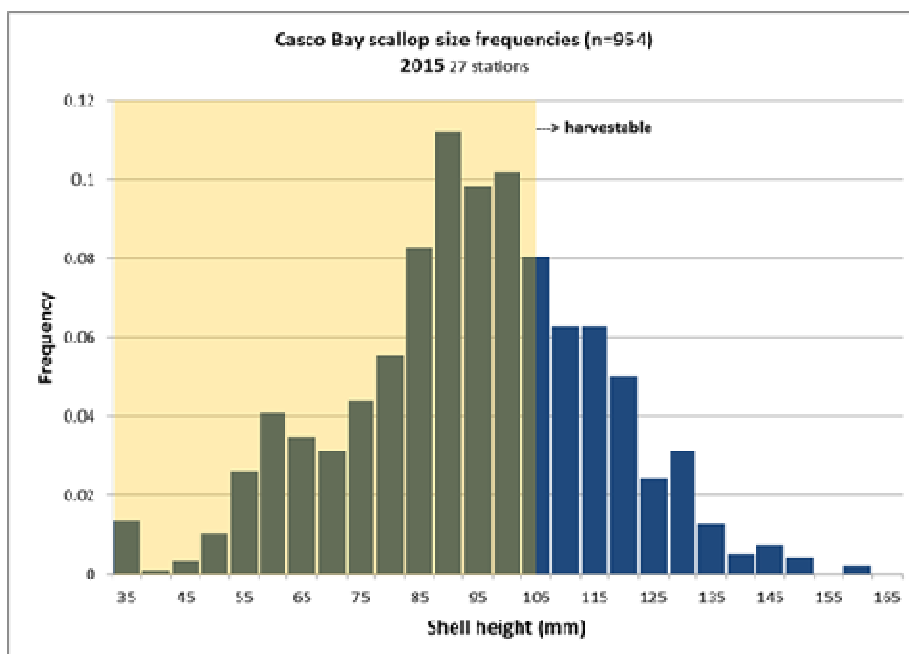
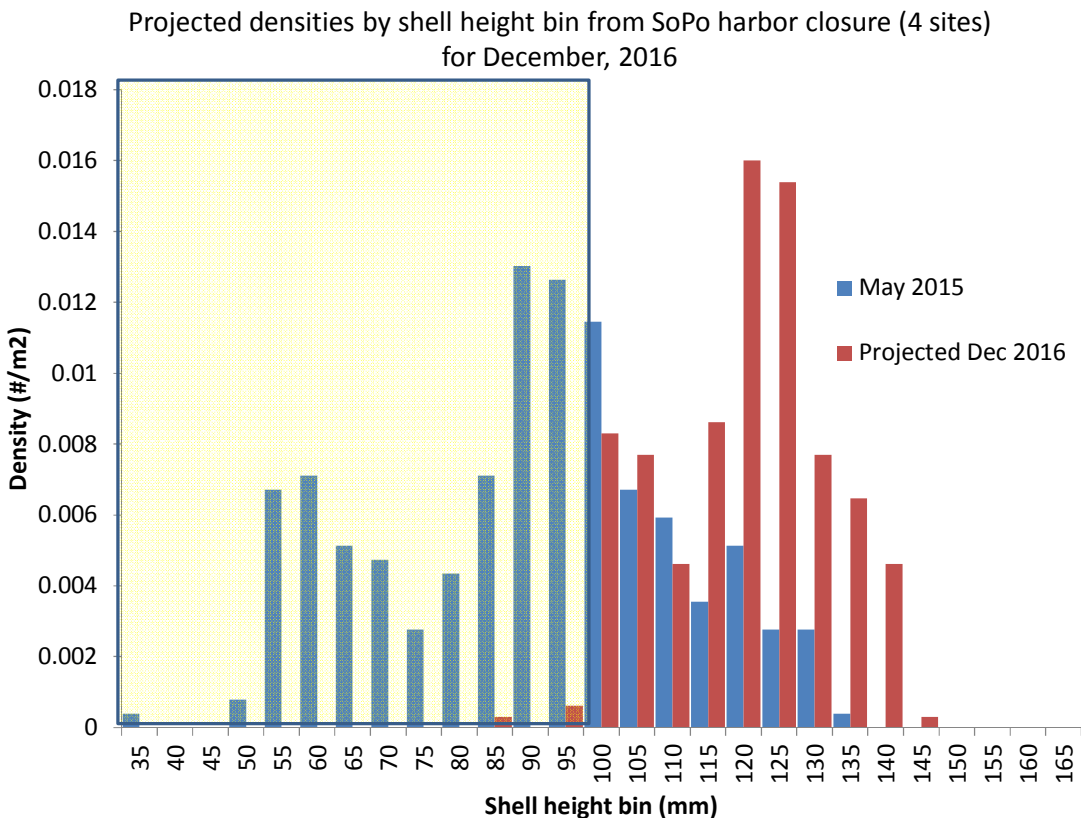
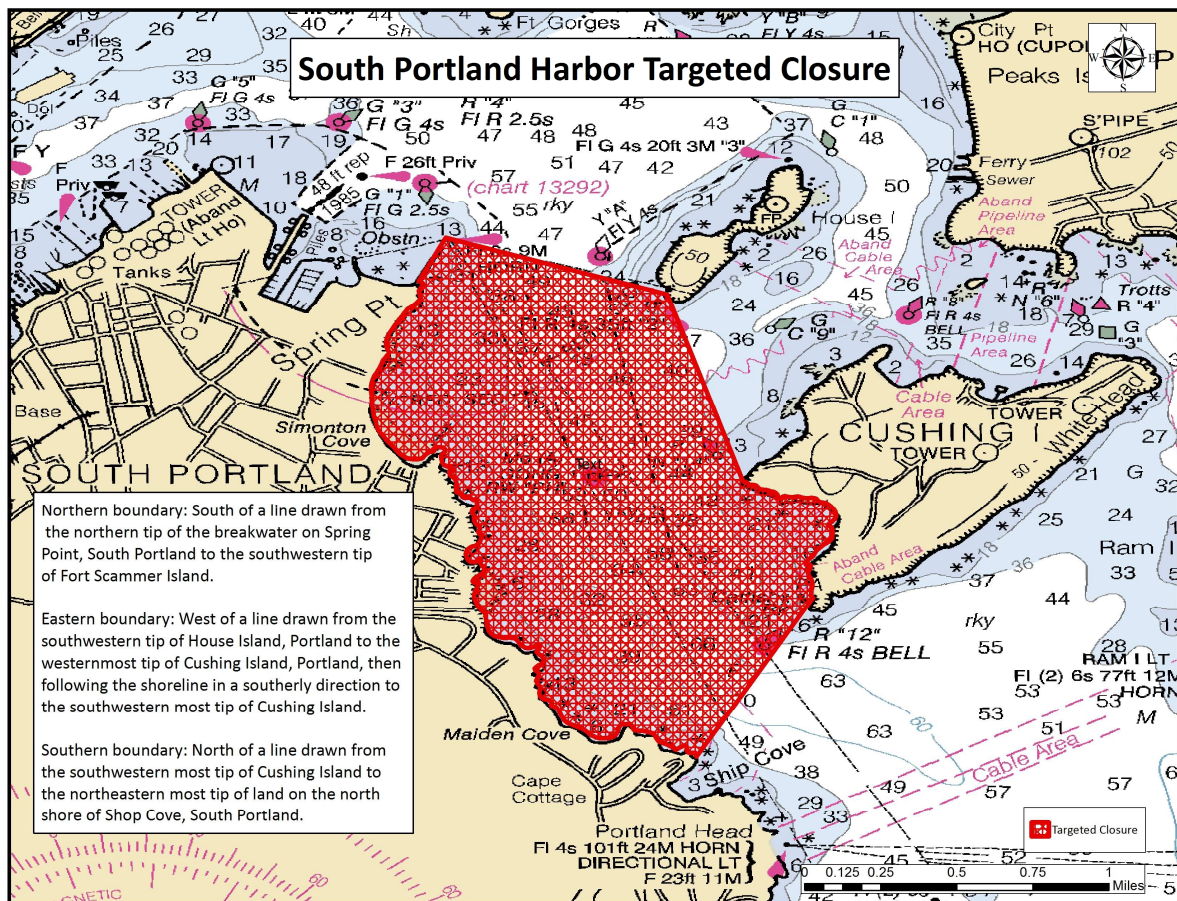


Figure 2. Density of scallops in South Portland Harbor area by 5 mm size bin (Spring 2015).



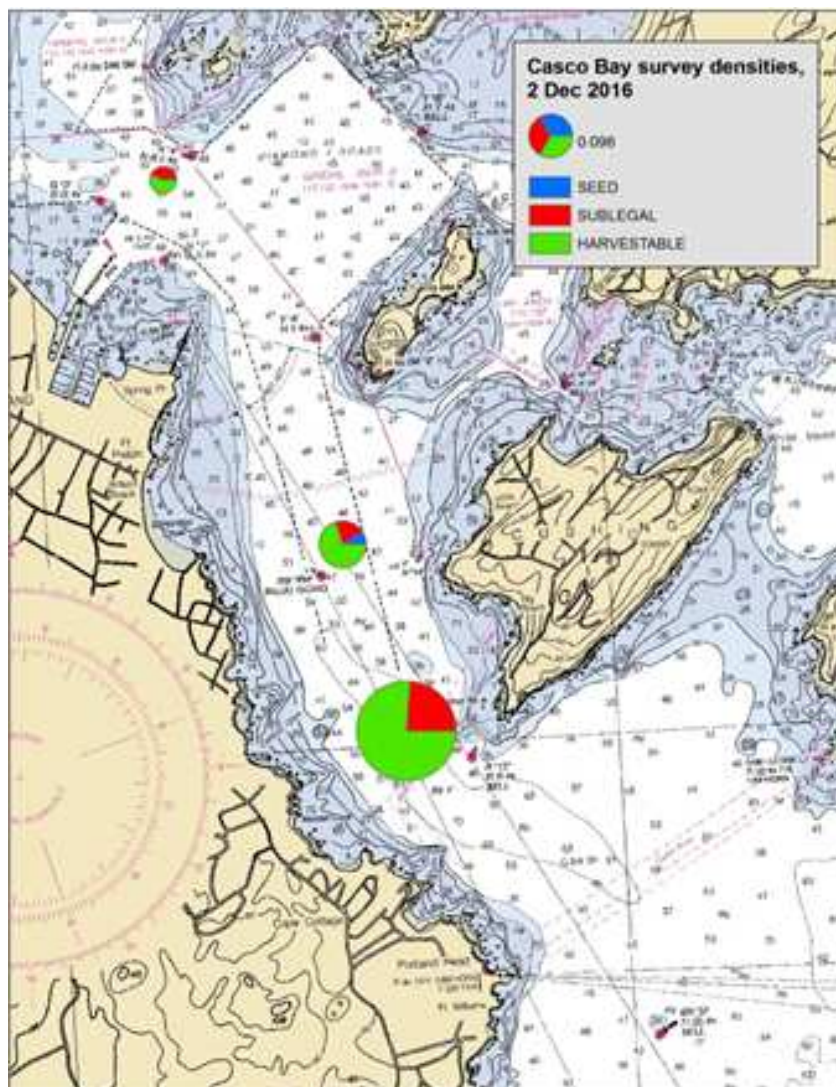


Figure 5. Locations of December 2, 2016 pre-season survey tows in Portland harbor area with pie charts representing overall density of scallops (chart size) and relative abundance of different sizes (colors).

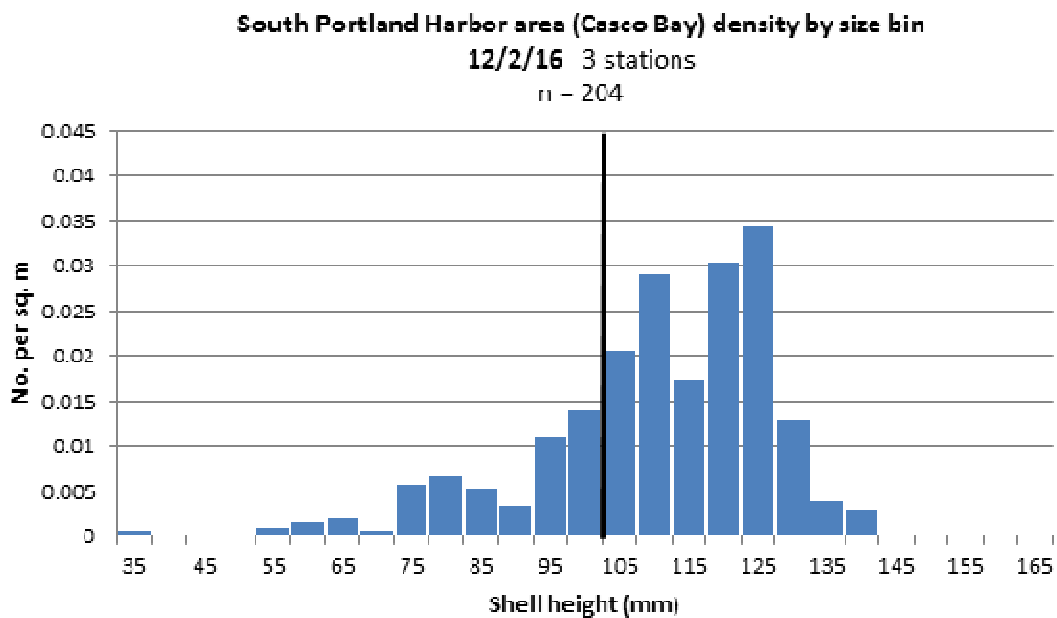


Figure 6. Density of scallops in Portland Harbor area by 5 mm size bin (December 2016).

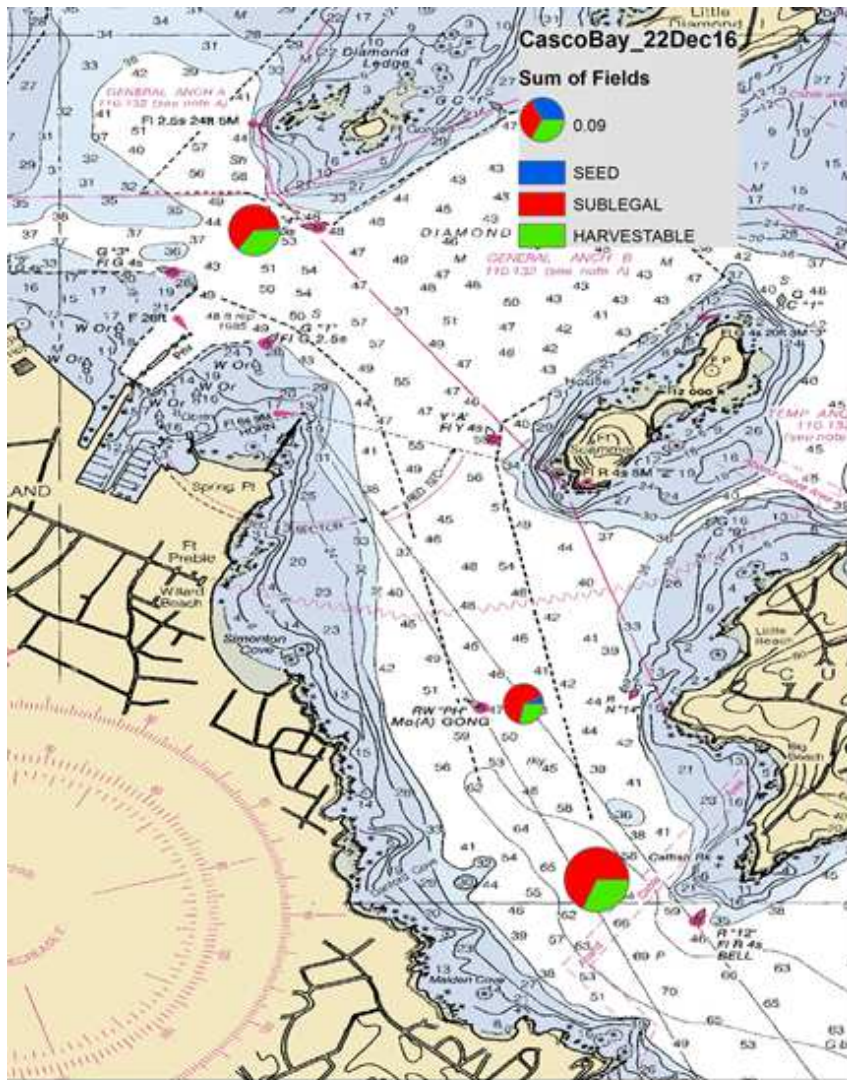


Figure 7. Locations of December 22, 2016 in-season survey tows in Portland harbor area with pie charts representing overall density of scallops (chart size) and relative abundance of different sizes (colors).

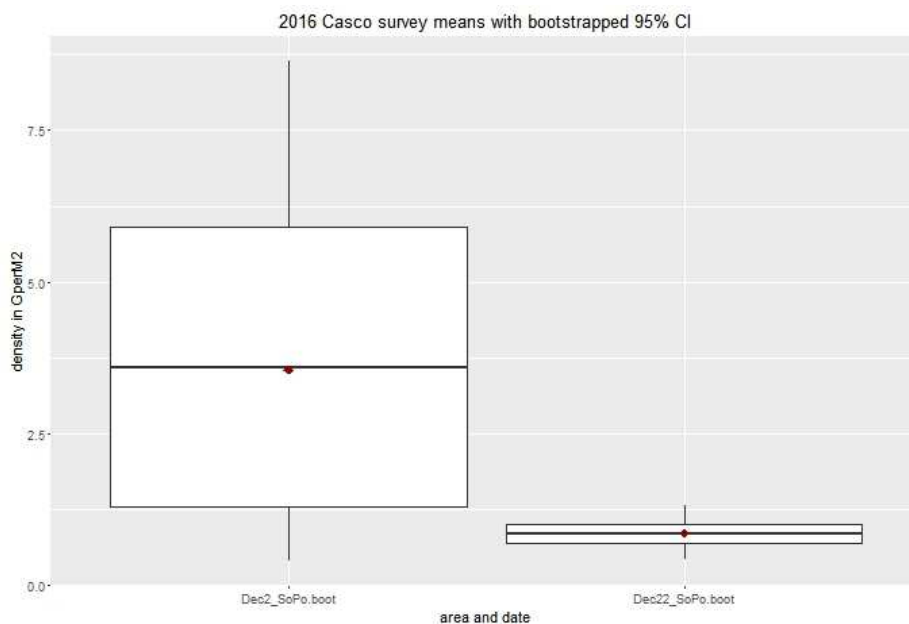


Figure 8. Comparison of mean density from December 2, 2016 pre-season survey and December 22, 2016 in-season survey, reflecting a 76% decline in harvestable scallops.

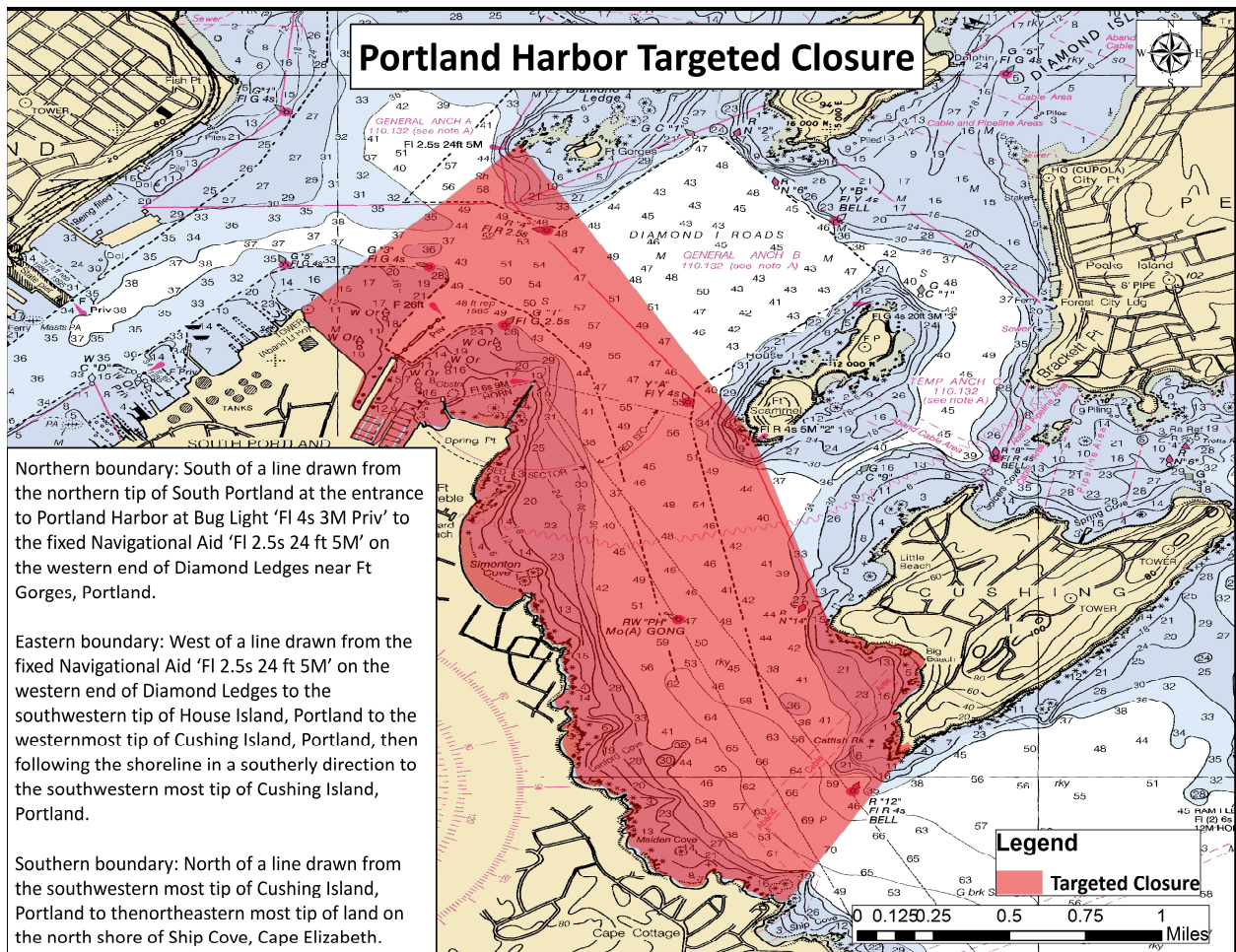


Figure 9. Portland Harbor targeted closure, which is effective January 1, 2017 for the remainder of the 2016-17 fishing season.

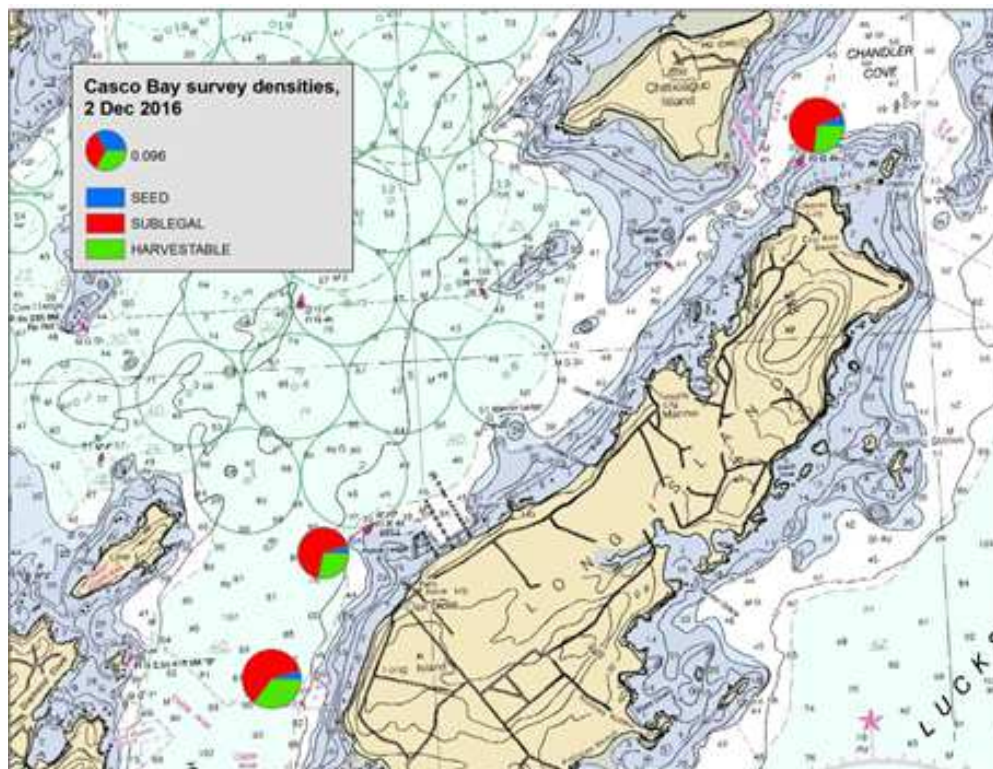


Figure 10. Locations of December 2, 2016 pre-season survey tows in Hussey Sound/Chandler Cove area with pie charts representing overall density of scallops (chart size) & relative abundance of different sizes (colors).

Chandler Cove and the Hussey (Casco Bay) density by size bin

12/2/16 3 stations

n = 403

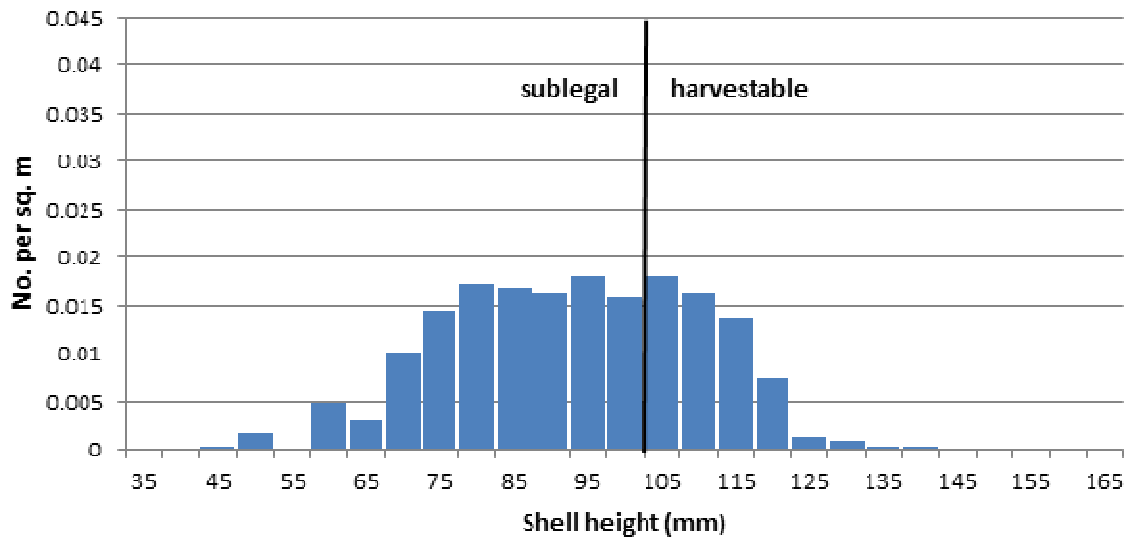


Figure 11. Density of scallops in the Hussey Sound/Chandler Cove area by 5 mm size bin.

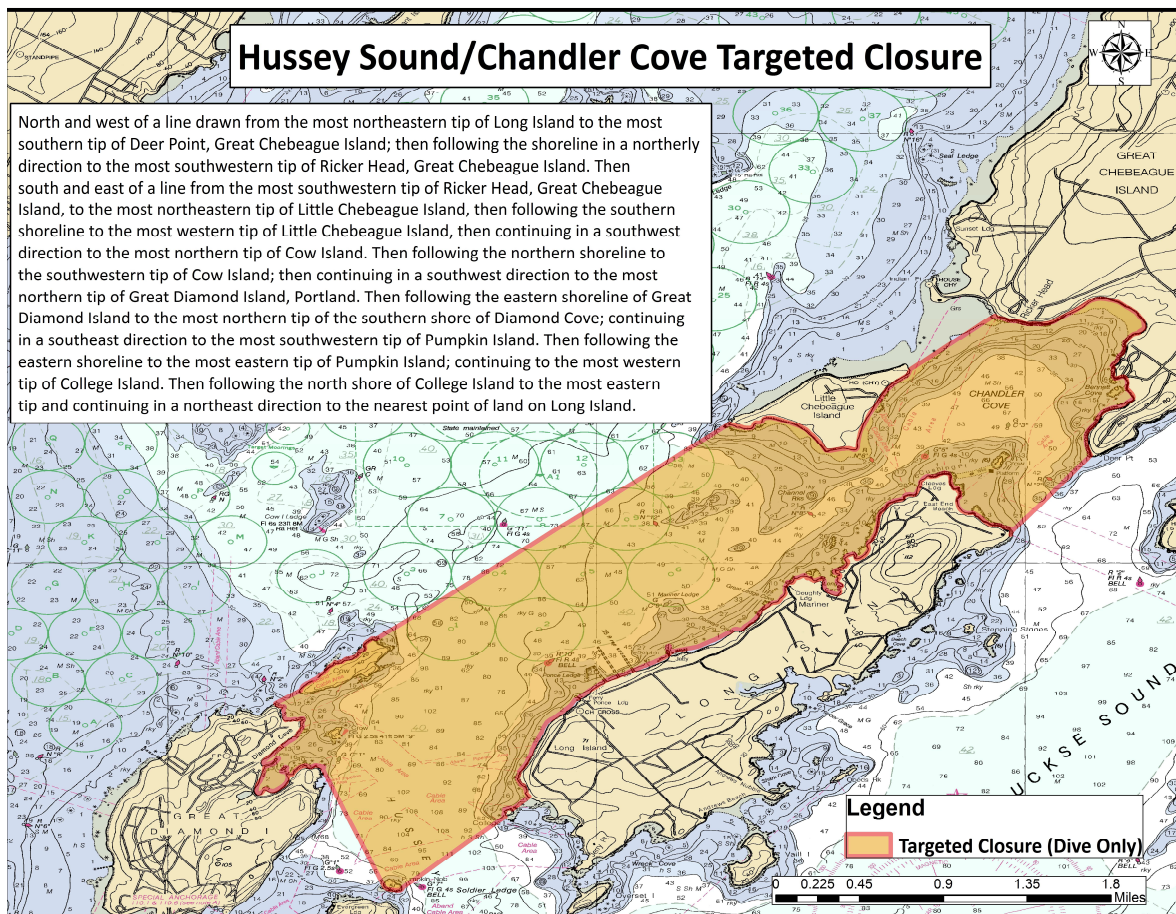


Figure 12. Hussey Sound/Chandler Cove targeted closure, which is effective January 1, 2017 for the remainder of the 2016-17 fishing season. The area shall remain open for hand harvest by scuba divers.

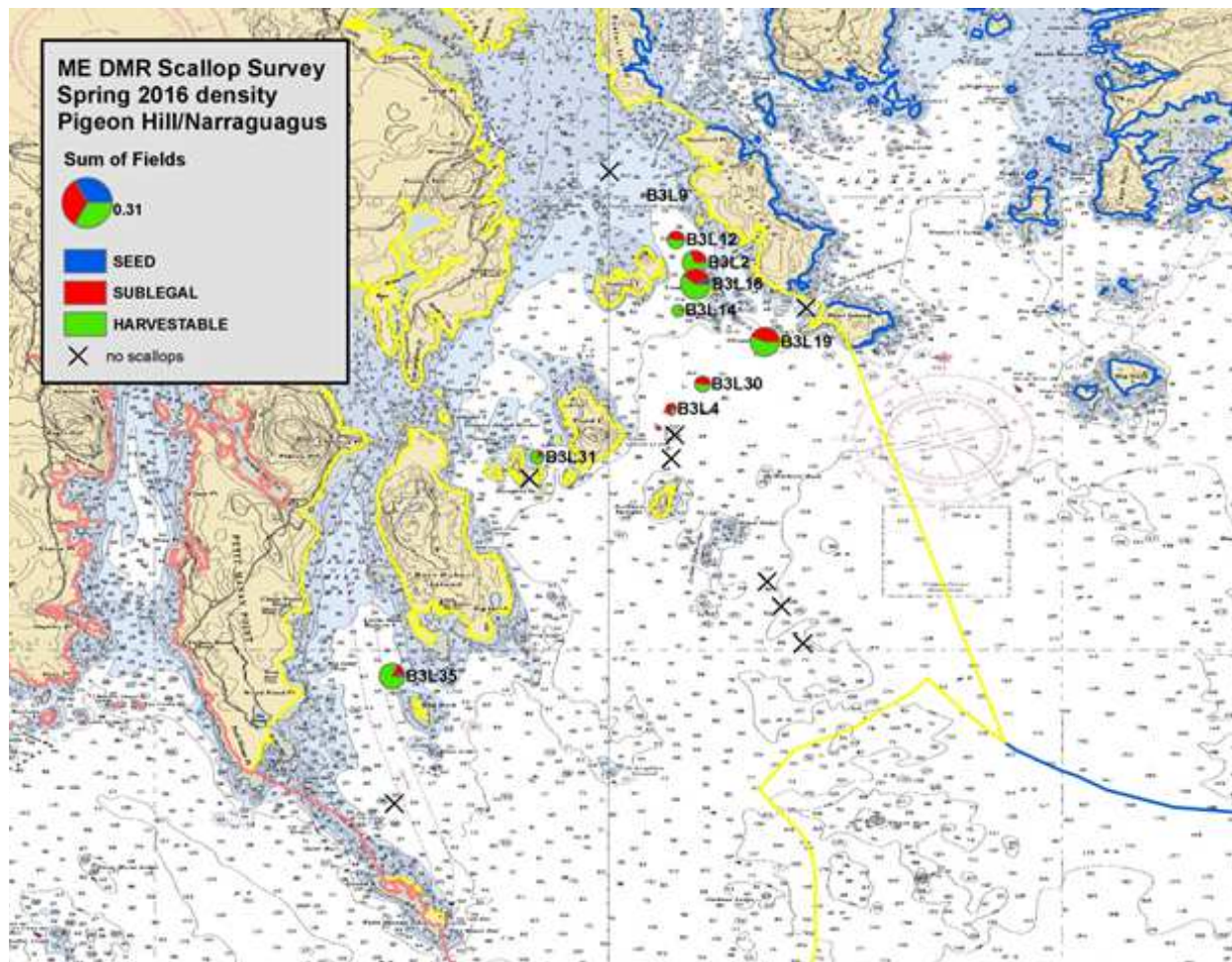


Figure 13. Locations of spring survey tows for Narraguagus/Pigeon Hill Rotational Area with pie charts representing overall density of scallops (chart size) and relative abundance of different sizes (colors).

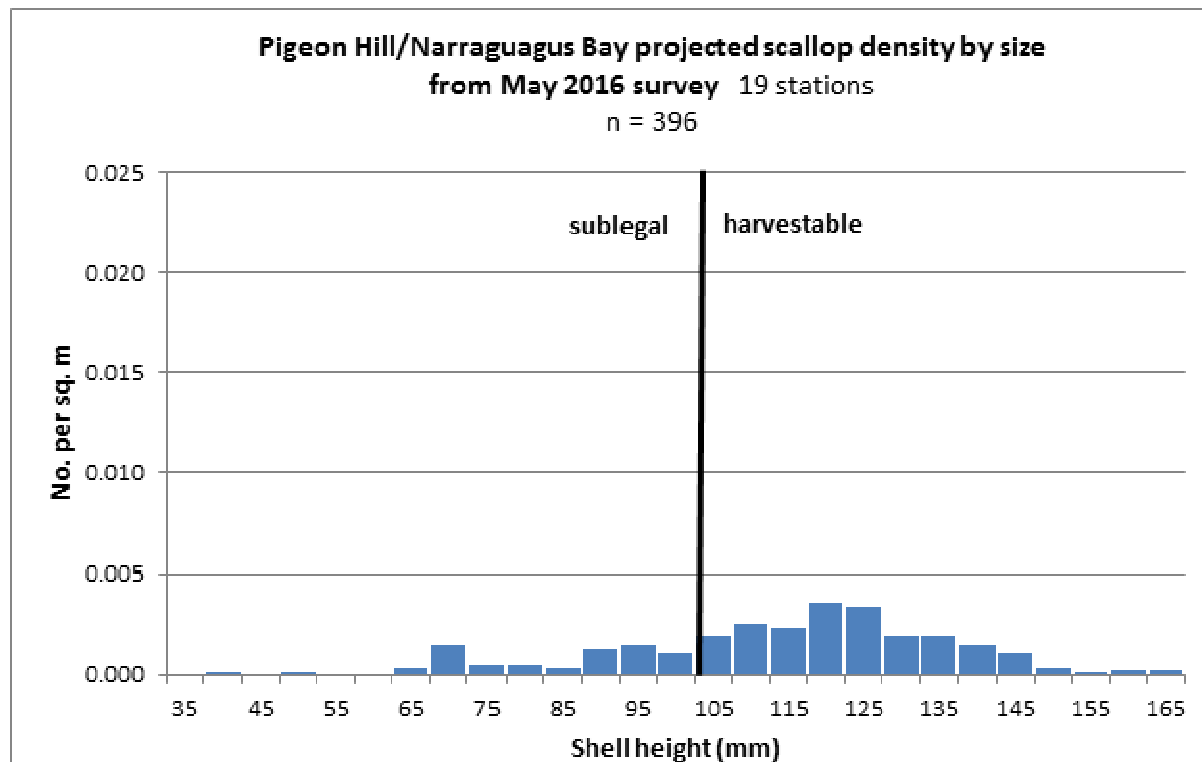


Figure 14. Projected density of scallops in the Narraguagus/Pigeon Hill Rotational Area in 5 mm size bins.

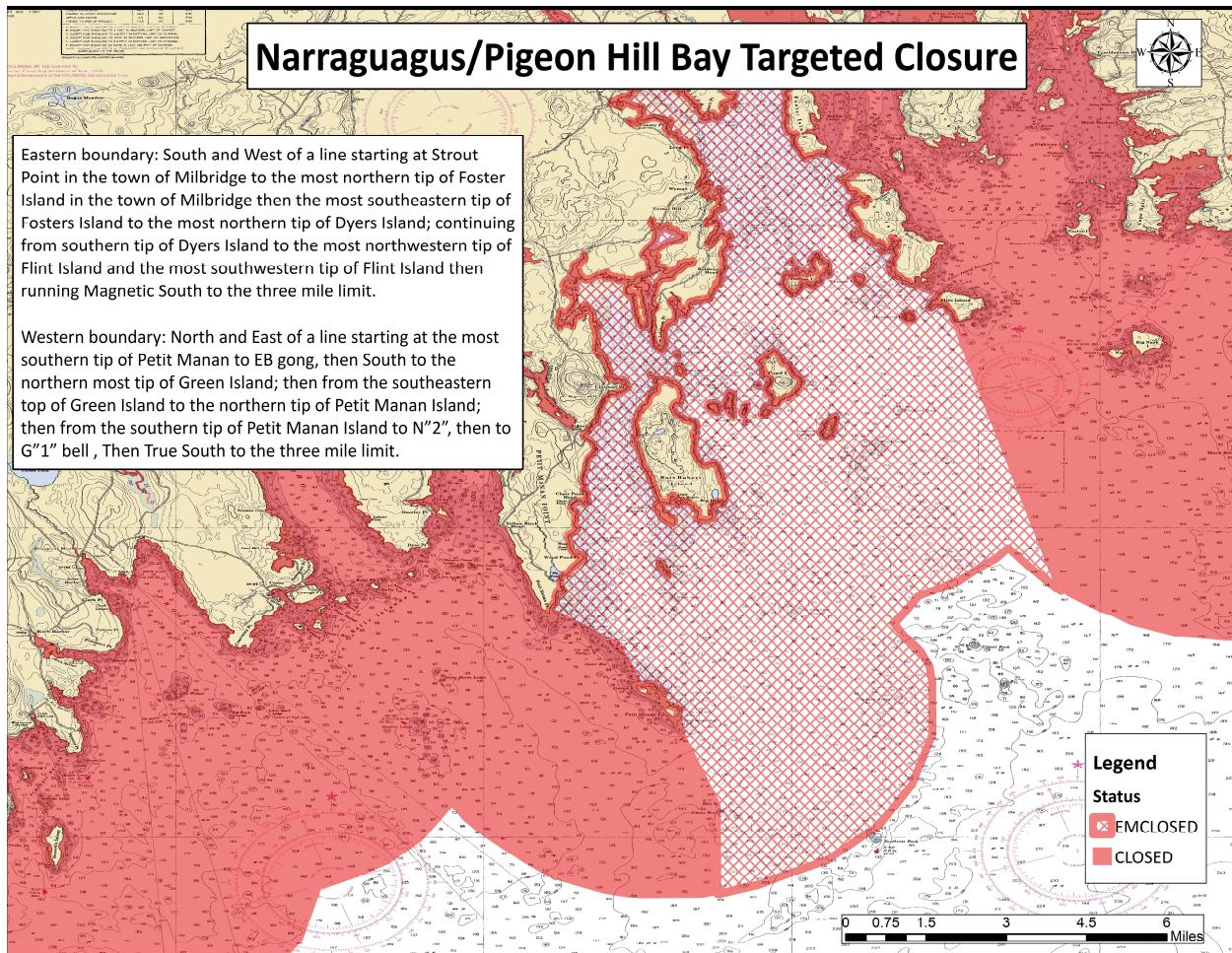


Figure 15. Narraguagus/Pigeon Hill Bay targeted closure, which is effective January 1, 2017 for the remainder of the 2016-17 fishing season.

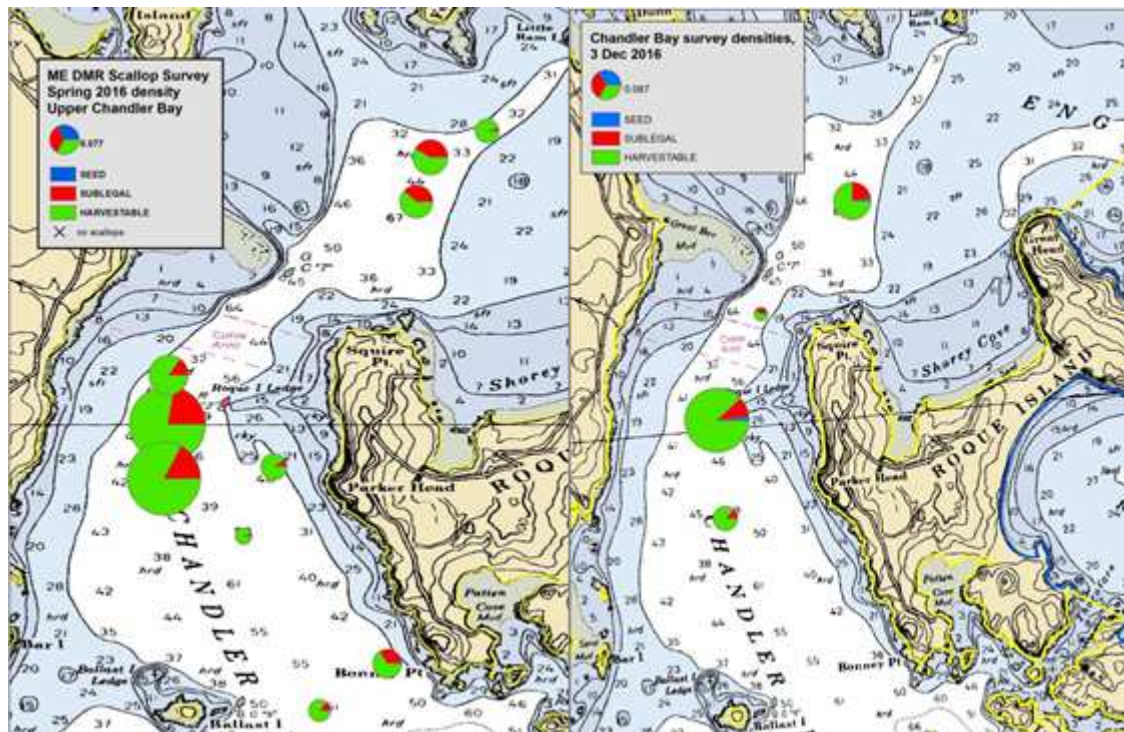


Figure 16. Locations of May 2016 survey tows (left) and December 3 survey tows (right) in the upper part of the Chandler Bay rotational area with pie charts representing overall density of scallops (chart size) and relative abundance of different sizes (colors).

Chandler Bay above Ballast Island scallop density by size bin

12/3/16 4 stations

n = 229

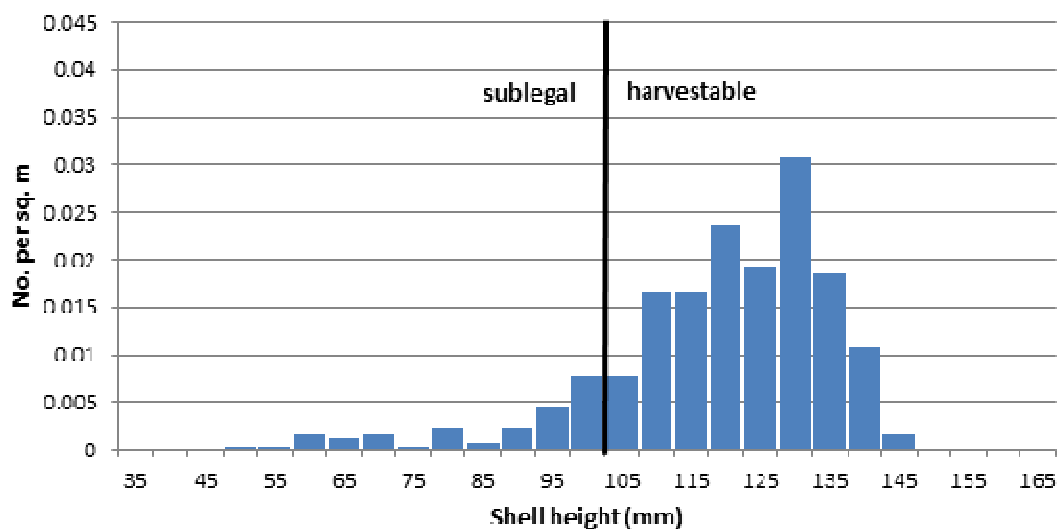


Figure 17. Density of scallops in the area above Ballast Island within the Chandler Bay rotational area in 5 mm size bins.

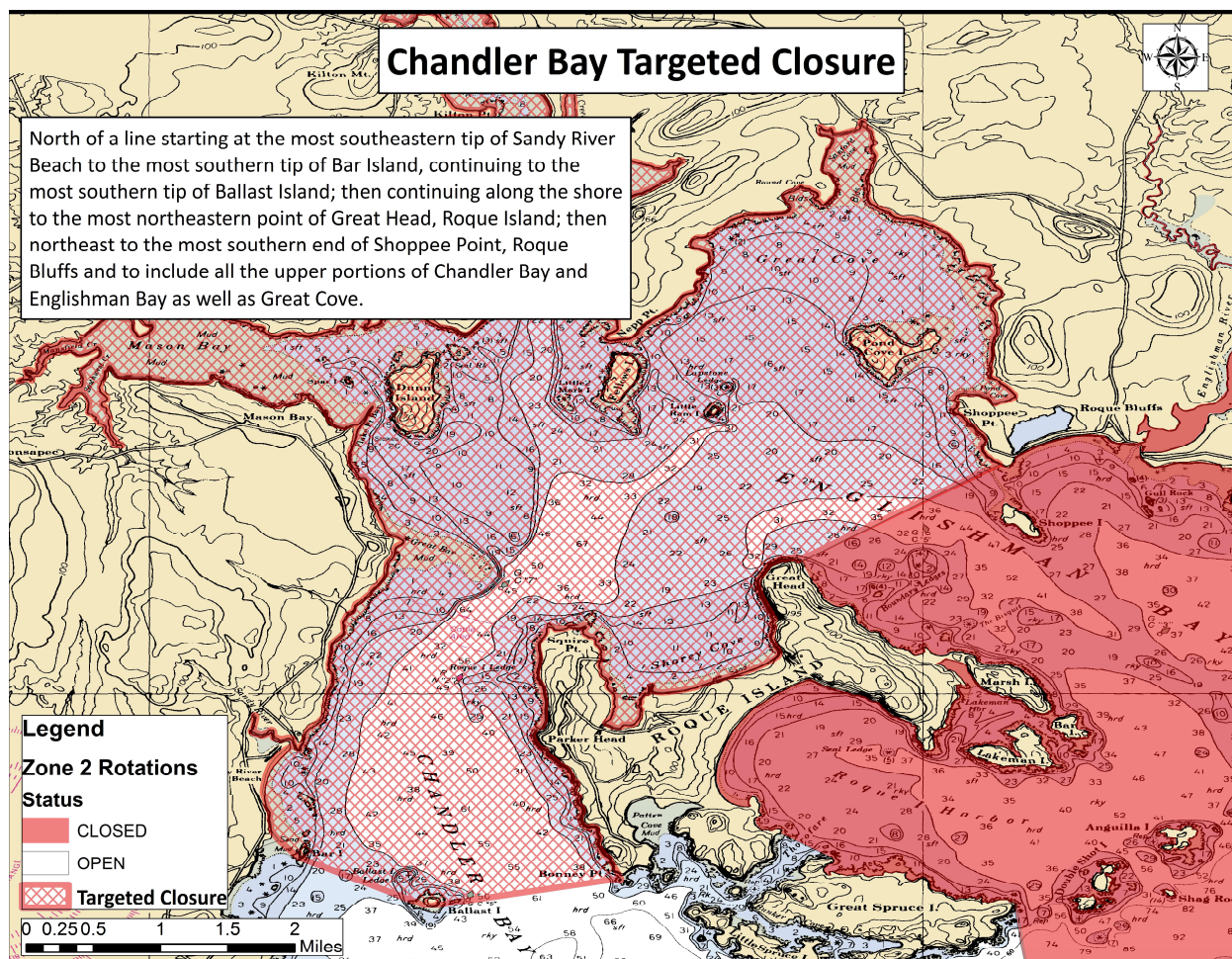


Figure 18. Chandler Bay targeted closure, which is effective January 1, 2017 for the remainder of the 2016-17 fishing season.

Rule-Making Fact Sheet (5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Deirdre Gilbert, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021
Telephone: (207) 624-6576; E-mail: dmr.rulemaking@maine.gov, web address:
<http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 11 Scallop Regulations and Chapter 11.08 Targeted Closures
Emergency Regulations

STATUTORY AUTHORITY: 12 M.R.S. §6171(3)

DATE AND PLACE OF PUBLIC HEARING: None, Emergency rulemaking

COMMENT DEADLINE: None, Emergency rulemaking

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

The Commissioner adopts this emergency rulemaking for the implementation of conservation closures located in Portland Harbor, Hussey Sound/Chandler Cove (hand harvest by scuba diving allowed), Narraguagus/Pigeon Hill Bay Rotational Area and Chandler Bay in order to protect Maine's scallop resource due to the risk of imminent depletion and unusual damage. Based on direct input from Marine Patrol and independent industry participants as well as observations made through the Department's monitoring programs, the level of fishing effort in these areas during the fishing season has likely exceeded the 30% removal target that ensures the fishery continues to rebuild. In the Hussey Sound/Chandler Cove area, high concentrations of both seed and sublegal scallops were observed in the December 2, 2016 pre-season fishery independent DMR survey. Continued fishing threatens remaining broodstock scallops that are needed for successful spawning to rebuild the resource in these areas as well as sublegal product that will recruit up to the fishery for harvest in future years. While scallop populations are indicating signs of recovery in some areas of the state, the Department is concerned that unrestricted harvest during the remainder of the 2016-17 fishing season in these specific areas may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing the broodstock essential to a recovery. These immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in South Portland Harbor, Hussey Sound/Chandler Cove (hand harvest by scuba diving allowed), Narraguagus/Pigeon Hill Bay and Chandler Bay, as authorized by [12 M.R.S. §6171](#)(3). In addition, there are a number of clarifications in this rulemaking which include:

- **11.05:** Additional language was added to clarify the exact points of land that the Blue Hill Bay Drag Restriction pertains to;
- **11.08:** A correction is needed to clarify that (1) Muscle Ridge is open to dragging on Mondays and Tuesdays in the opening paragraph of section 11.08, in addition to (10)(11)(12) & (13) being added;
- **11.09:** A clarification that Limited Access Areas are open unless otherwise indicated in section 11.08, such as Sheepscot River and Muscongus Bay being clarified that they are in fact closed during the 2016-17 scallop season. In addition, a clarification was needed to change Southwest Harbor to Northeast Harbor for the southern boundary of the (5) Mount Desert Island Limited Access Area, and
- **11.12:** A correction to the C Third Rotation (7) Lower Penobscot Bay & Outer Islands Rotational Area which removed the language referring to Little Green and Large Green Islands as they are actually in Zone 1, not Zone 2 and are therefore not subject to rotational management.

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

The adopted rules seek to conserve the scallop resource for utilization in the future. The rule is intended to have a long-term positive impact on the scallop resource to benefit future harvesters and the wholesale and retail seafood industry.

FISCAL IMPACT OF THE RULE:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.